

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MARK MCGIVNEY,

Petitioner,

v.

Case No. 10-13302  
Honorable Patrick J. Duggan

SHERRY BURT,

Respondent.

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**ORDER DENYING PETITIONER'S MOTION TO LIFT STAY**

Mark McGivney ("Petitioner"), a state prisoner currently incarcerated at the Oaks Correctional Facility in Manistee, Michigan, filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On March 20, 2012, the Court granted Petitioner's motion to stay the habeas proceedings to allow him to return to the state courts to exhaust additional claims. Presently before the Court is Petitioner's motion requesting that the stay be lifted.

The Court stayed proceedings on the habeas corpus petition pending Petitioner's exhaustion of the unexhausted claims in state court, ordered the case closed for administrative purposes, and required Petitioner to present his unexhausted claims to the state court within sixty days from the date of the Opinion and Order. The Opinion and Order further instructed Petitioner to return to this Court to request that the stay be lifted within sixty days of exhausting state court remedies. Petitioner filed a motion for relief from judgment in the trial court. Although the papers filed in this Court do not indicate

when Petitioner filed his motion for relief from judgment in state court, the trial court denied the motion on June 20, 2012, about three months after the Court stayed the habeas proceedings. Therefore, it is likely that Petitioner filed his motion for relief from judgment within the allotted sixty days. It does not appear, however, that Petitioner has pursued any further review in state court. Petitioner attaches to his motion only the state trial court's order denying the motion for relief from judgment. He does not claim to have filed an application for leave to appeal to the Michigan Court of Appeals. Further, a search of the Michigan Court of Appeals' public database of electronic court records shows no application for leave to appeal having been filed. Therefore, Petitioner has not yet exhausted his state court remedies and the Court declines to reopen the habeas corpus proceeding.

In order to properly exhaust his claims, Petitioner must not only seek relief from judgment in the trial court, but he must seek review of the trial court's denial of his motion for relief from judgment in both the Michigan Court of Appeals and the Michigan Supreme Court.

Accordingly,

**IT IS ORDERED** that Petitioner's "Motion to Lift Stay-of-Abeyance [sic] Under 28 U.S.C.A. § 2254 and § 2255" [dkt. # 28] is **DENIED**. The case remains closed for administrative purposes.

Date: April 9, 2013

s/PATRICK J. DUGGAN  
UNITED STATES DISTRICT JUDGE

Copies to:

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Oaks Correctional Facility  
1500 Caberfae Highway  
Manistee, MI 49660

**Mark G. Sands, A.A.G.**